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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,547	12/28/2001	Naveen Agarwal	15546	1410
23556	7590	06/09/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			ROANE, AARON F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,547

Applicant(s)

AGARWAL ET AL.

Examiner

Aaron Roane

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 and 14-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Welch et al.  
(USPN 3,900,035).

Regarding claim 1, Welch et al. disclose a wrap comprising a first and second elastic sheet (both labeled 10) bonded together (bonded by stitching (14)) to form a plurality of pockets (12), and a thermal agent contained within said pockets (16), see col. 1-4 and figures 1-4.

Regarding claims 7 and 8, Welch et al. further disclose that a water containing composition is used as the thermal agent, see col. 2, lines 1-3. Additionally, the wrap is capable of being both heated in a microwave and cooled in a refrigerator.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al. (USPN 3,900,035) in view of Allen (USPN 5,507,794).

Regarding claim 2-6, Welch et al. disclose the claimed invention except for explicitly reciting that the elastic portion is stretchable and elongatable by at least about 50, 100 or 200 percent upon application of an elongating force and will return to within 10 or 5 percent of its original length upon release of the elongating force. Allen discloses an elastic thermal wrap (10) comprising a first thermal portion (the first of 20) containing a thermal agent gel (42, see col. 4, lines 8-25), a second thermal portion (the second of 20) containing a thermal agent (42), a first elastic sheet (10), a second elastic sheet (55) joined to the first elastic sheet to form a plurality of pockets (55) containing thermal agent, see col. 2, line 52 through col. 4, line 52 and figures 1 and 2. Refer to col. 2, line 63 through col. 3, line 4 regarding elastic material of the sheets. Allen further discloses an elastic thermal wrap and teaches that it is well known in the art to use material made

of either Lycra®, Spandex and Nylon which have the stretching properties recited by the claimed invention, namely at least a 200% stretch upon application of force and a return to within 5% of the original length once the force is removed, see col. 2, line 63 through col. 3, line 4. Therefore it would have been obvious to one of ordinary skill in the art to modify the invention of Welch et al., as is well known in the art and shown by Allen, to make the elastic sheets of the thermal wrap from material made of either Lycra®, Spandex and Nylon in order to provide breathability and/or elasticity.

Regarding claim 13, Welch et al. disclose the claimed invention except for explicitly reciting that a closure or fastening means is provided to the wrap. It is extremely well known in the art to provide thermal wraps/bandages with a means of fastening or closure in order to securely fasten the wrap in place on a particular body part. Allen teaches the use of a securing member (2) in order to removably secure “the support member ends (11), (12). The securing member 2 is adapted to accommodate a wide range of upper torso sizes while providing substantially even pressure about the wearer's breast regions. As will be recognized in the art, various adjustable securing members may be employed to achieve the adjustable tensioning of the invention, such as a plurality of appropriately positioned conventional snaps, buttons and hooks,” see col. 3, lines 5-14 and figures 1 and 2. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Welch et al., as is well known in the art and taught by Allen, to provide the thermal wrap with fastening/closure means in order to removably secure the wrap to a body portion.

***Response to Amendment***

The examiner acknowledges the amendments to the claims. Claims 9-12 and 14-27 have been withdrawn while claims 1-8 and 13 have retained and examined.

***Response to Arguments***

Applicant's arguments with respect to claims 1-8 and 13 have been considered but are moot in view of the new ground(s) of rejection.

The Welch et al. reference has been used in order to meet the claimed subject matter of two elastic sheets bonded together to form a plurality of thermal agent pockets. Allen is used to teach the use of the necessary elastic material in order to meet the claimed elasticity properties and the use of closure/fastening means.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (703) 305-7377. The examiner can normally be reached on 9am - 5pm, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*  
June 3, 2004

*Roy D. Gibson*  
**ROY D. GIBSON**  
**PRIMARY EXAMINER**